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Access Petition for in re Patent Application :  
Ott et al. :  
Application No. 09/314,052 :  
Filed: May 18, 1999 :

**OFFICE OF PETITIONS**  
DECISION DISMISSING  
PETITION UNDER  
37 CFR §1.14

This is a decision on a February 20, 2004 petition for access under special circumstance to US Application SN 09/314052.

The petition is before the Office of Patent Legal Administration of the United States Patent and Trademark Office.

The petition is dismissed as moot.

### BACKGROUND

On May 18, 1999, Ott et al. filed US Patent Application SN 09/314,052, (the '052 application). The '052 application is currently pending. The '052 application was not published.

On May 17, 2000, Ott et al. filed International Application Number PCT/US00/13717, (the IA). The IA published on November 23, 2000 as WO 2000/69511 and claimed priority to US Patent Application SN 09/314,052.

On February 20, 2004 petitioner filed a petition for access under 37 CFR 1.14(h) and MPEP 103 asserting special circumstances.

On September 15, 2004, the Office sent applicant a three-week letter notifying them of the petition for access and requesting comment on the petition for access.

On October 1, 2004, applicant responded opposing any grant of the petition for access.

On October 7, 2004 applicant filed US Patent Application SNs 10/960,148, 10/960,188, 10/960,809, and 10/960,826, all claiming benefit to US Patent Application SN 09/314,052. US Patent Application SNs 10/960,188 and 10/960,826 published on May 19, 2005 as US Patent Application Publication Nos. US 2005-0107766 A1 and US 2005-0107767 A1 respectively. US Patent Application SNs 10/960,148 and 10/960,809 published on May 26, 2005 as US Patent Application Publication Nos. US 2005-0113795 A1 and US 2005-0113797 A1 respectively.

On February 23, 2006 applicant filed US Patent Application SN 11/360,721 claiming benefit to US Patent Application SN 09/314,052. The 11/360,721 application published on August 17, 2006 as US Patent Application Publication Nos. US 2006-0184096 A1.

37 CFR 1.14 states (in part):

(v) *Unpublished pending applications (including provisional applications) whose benefit is claimed.* A copy of the file contents of an unpublished pending application may be provided to any person, upon written request and payment of the appropriate fee (§1.19(b)), if the benefit of the application is claimed under 35 U.S.C. 119(e), 120, 121 or 365 in an application that has issued as a U.S. patent, an application that has published as a statutory invention registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2). A copy of the application-as-filed, or a specific document in the file of the pending application may also be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(b)). The Office will not provide access to the paper file of a pending application, except as provided in paragraph (c) or (h) of this section.

(b) *Electronic access to an application.* Where a copy of the application papers or access to the application may be made available pursuant to paragraphs (a)(1)(i) through (a)(1)(vi) of this section, the Office may at its discretion provide access to only an electronic copy of the specification, drawings, and file contents of the application.

## DECISION

Petitioner filed a petition under 37 CFR 1.14(h) and MPEP 103 “special circumstances” requesting access to the ‘052 application. At the time of filing the petition the ‘052 application was pending and benefit of the ‘052 application was claimed by a published international application, WO 2000/69511 (PCT/US00/13717).

Furthermore, subsequent to the filing of the ‘052 application, applicant has filed several new applications all claiming benefit to the ‘052 application and all of which have published.

Accordingly, by operation of law the ‘052 application is open to the public. Therefore an analysis and discussion of the “special circumstances” petition and applicant’s opposition is unnecessary.

In view of the above, US Patent Application No. 09/314,052 is accessible to the public under 37 CFR 1.14(b) and/or via the procedures set forth in MPEP 1730E. Therefore, the petition is **dismissed as moot.**

### CONCLUSION

1. The petition under 37 CFR 1.14(h) and MPEP 103 "special circumstances" for access to US Patent Application No. 60/051,108 is **dismissed as moot**.
2. Telephone inquiries with regard to this decision should be directed to Joseph F. Weiss, Jr., Office of Patent Legal Administration, at (571) 272-7759.



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